



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 3, 1998

Mr. J. Paul Nelson
Attorney-Mediator
P.O. Box 934
Henderson, Texas 75653

OR98-0578

Dear Mr. Nelson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113405.

The City of Henderson (the "city"), which you represent, received an open records request for certain records pertaining to the city's use of radar units for traffic enforcement purposes. In your request for an open records decision, you argue that the requested information is excepted from required public disclosure pursuant to sections 552.103, 552.107, and 552.108 of the Government Code. You also state that some of the requested records are not maintained by the city. You did not, however, submit to our office at the time of your request copies of the requested records actually held by the city. *See* Gov't Code § 552.301(b).

Pursuant to section 552.303(c) of the Government Code, on January 6, 1998, our office notified you by letter sent via facsimile that you had failed to submit information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e), failure to comply would result in the legal presumption that the requested information is public information.

You did not provide our office with the information that was requested in our January 6, 1998 notice to you. Therefore, as provided by section 552.303(e), the requested information is presumed to be public absent a demonstration that a compelling interest exists for withholding the information. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

Because you have not presented this office with compelling reasons for withholding the requested information pursuant to sections 552.103, 552.107, or 552.108, we deem these exceptions to disclosure as being waived. Consequently, the requested records, to the extent they are held by the city,¹ must be released in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large loop at the beginning.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/RWP/rho

Ref.: ID# 113405

cc: Mr. T. William Crane
Director, Western Division
American Driver's Association
200 Gate Way Center, Suite 326
Liberty, Texas 75662

¹The Open Records Act does not require a governmental body to obtain information that is not in its possession. Open Records Decision Nos. 445 (1986), 317 (1982).